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Applicant(s):	Andreas Kruger et al.	
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APPEAL BRIEF UNDER 37 CFR § 41.37

This Appeal Brief and a request for one month extension are filed pursuant to the Notice of Appeal filed April 24, 2006.

1. ***Real Party in Interest.***

The real party in interest in this appeal is Nokia Inc., the assignee of the above-referenced patent application.

2. ***Related Appeals and Interferences.***

There are no related appeals and/or interferences involving this application or its subject matter.

3. ***Status of Claims.***

The present application currently includes Claims 9-26, which all stand rejected.

4. ***Status of Amendments.***

There are no unentered amendments in this application.

5. ***Summary of Claimed Subject Matter.***

The claimed invention provides for an operable device to be used in a vehicle, a method for controlling an operable device, and a decision unit coupled to an operable device. As recited in independent claim 9, an operable device (element 11, 12, or 13 of FIG. 1 and lines 3-4 of paragraph [0011] of the substitute specification) to be used in a vehicle (paragraph [0011], line 1) includes an operating panel (paragraph [0011], line 5) and a decision unit (paragraph [0012], line 1). The operating panel may be utilized by a user to produce the existing operating states and/or change the existing operating states of the operable device (paragraph [0015], lines 6-9). The decision unit is coupled to the operating panel and receives data for determining vehicle-specific conditions over a time period of vehicle operation by evaluating the received data (paragraph [0018]). The decision unit also converts the vehicle-specific conditions into a driving profile indicating an actual driving situation of the vehicle (paragraph [0024]). The decision unit either blocks or releases the existing operating states of the operable device according to whether the actual driving situation is dangerous or non-dangerous based on the driving profile (paragraph [0007] and paragraph [0024]).

As recited in independent claim 10, an operable device (element 11, 12, or 13 of FIG. 1 and lines 3-4 of paragraph [0011] of the substitute specification) to be used in a vehicle (paragraph [0011], line 1) includes an operating panel (paragraph [0011], line 5) and a decision unit (paragraph [0012], line 1). The operating panel may be utilized by a user to produce the existing operating states and/or change the existing operating states of the operable device (paragraph [0015], lines 6-9). The decision unit is coupled to the operating panel and receives data for determining vehicle-specific conditions by measuring fluctuations of a driving speed of the vehicle over a time period (paragraph [0018]). The decision unit either blocks or releases the existing operating states of the operable device based on the measured fluctuation (paragraph [0018]).

As recited in independent claim 25, a method of controlling an operable device (element 11, 12, or 13 of FIG. 1 and lines 3-4 of paragraph [0011] of the substitute specification) is provided. The method includes controlling an operating panel by a user to produce the existing operating states and/or change the existing operating states of the operable device (paragraph [0015], lines 6-9). The method also includes receiving data in a decision unit which is coupled to the operating panel (paragraph [0018]) and determining vehicle-specific conditions over a

time period of vehicle operation by evaluating the received data (paragraph [0018]). The method also includes converting the vehicle-specific conditions into a driving profile indicating an actual driving situation of the vehicle (paragraph [0024]) and blocking or releasing the existing operating states of the operable device according to whether the actual driving situation is dangerous or non-dangerous on a basis of the driving profile (paragraph [0007] and paragraph [0024]).

Finally, as recited in independent claim 16, a decision unit (paragraph [0012], line 1) coupled to an operable device (element 11, 12, or 13 of FIG. 1 and lines 3-4 of paragraph [0011] of the substitute specification) is provided. The decision unit includes an input for receiving sensor signals (paragraph [0012]). The decision unit determines vehicle-specific conditions over a time period of vehicle operation by evaluating the received sensor signal (paragraph [0018]). The decision unit also converts the vehicle-specific conditions into a driving profile indicating an actual driving situation of the vehicle (paragraph [0024]). The output is for outputting an output signal which is used for changing the operating states of the operable device connected to the decision unit (paragraph [0007] and paragraph [0024]).

6. ***Grounds of Rejection to be Reviewed on Appeal.***

(i) Claim 26 stands rejected under 35 U.S.C. §102(b) as being anticipated by Skala et al. (U.S. Patent No. 5,027,432, hereinafter "Skala").

(ii) Claims 9-25 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Skala in view of Oda (U.S. Patent No. 6,393,301).

7. ***Argument.***

The claimed invention, as recited by independent claims 9, 10, 25 and 26, provide operable devices, a method, and a decision unit for, *inter alia*, determining vehicle specific conditions over a period of time by either measuring fluctuations in driving speed of the vehicle over a time period (claim 10) or by creating a driving profile indicating an actual driving situation of the vehicle (claims 9, 25 and 26) and then blocks or releases the existing operating states of an operable device based on the measured fluctuation or according to whether the actual driving situation is dangerous or non-dangerous based on the driving profile. In other words, a

dynamic determination of how speed has changed over a period of time is performed rather than simply a static determination based on a current speed.

A. Brief Summary of Argument

As a brief summary, Applicants respectfully submit that the cited references, taken either individually or in combination, do not teach or suggest the claims. Applicants submit that neither the primary reference (Skala) nor the secondary reference (Oda) teach or suggest determining vehicle specific conditions over a period of time by either measuring fluctuations in driving speed of the vehicle over a time period (claim 10) or by creating a driving profile indicating an actual driving situation of the vehicle (claims 9, 25 and 26) and then blocking or releasing the existing operating states of an operable device based on the measured fluctuation (claim 10) or according to whether the actual driving situation is dangerous or non-dangerous based on the driving profile (claims 9 and 25).

B. Skala Fails To Teach Or Suggest Determining Vehicle-Specific Conditions Over A Time Period

As stated above, the claimed invention is directed to determining vehicle-specific conditions with respect to a period of time in order to create the driving profile. Thus, for example, the vehicle-specific condition may be measured in terms of a dynamic, rather than static feature only. Accordingly, an exemplary embodiment of the claimed invention according to independent claim 26 is capable of measuring a vehicle-specific condition over a time period and as such creates a driving profile based on, for example, how speed has changed during the time period rather than based simply on the current speed.

Skala is directed to a device for controlling the output volume of a car audio system based on the **current** speed of a motor vehicle. Applicants submit that Skala fails to teach or suggest a decision unit determining vehicle-specific conditions over a time period of vehicle operation as claimed in independent claim 26. In this regard, it is clear from the cited passages of Skala, namely col. 3, lines 42-49 & 59-67 and col. 4, lines 3-6 & 26-28, and indeed from the entirety of the Skala disclosure, that the output volume is based upon a current driving condition (i.e., current vehicle speed) and does not consider a history of the vehicle speed (i.e., vehicle

speed over a time period) for purposes of controlling the output volume. Thus, Skala fails to teach or suggest determining vehicle-specific conditions over a time period as claimed in independent claim 26.

C. The Cited References Fail To Teach Or Suggest Converting The Vehicle-Specific Conditions Into A Driving Profile Indicating An Actual Driving Situation Of The Vehicle

Applicants submit that both Skala and Oda fail to teach or suggest converting the vehicle-specific conditions into a **driving profile** indicating an actual driving situation of the vehicle as claimed in independent claims 9, 25 and 26.

Skala discloses that the different volume levels are programmed into memory to correspond to different vehicle speeds (col. 3, line 59 to col. 4, line 14). Thus, Skala teaches a direct conversion from the speed signal V to a corresponding volume based on the programming. Since the conversion of Skala is directly performed, Skala fails to teach or suggest converting the vehicle-specific conditions into a driving profile indicating an actual driving situation of the vehicle as claimed in independent claims 9, 25 and 26. In the Advisory Action, the Examiner asserts that the storing of volume and speed pairings constitutes the creation of a driving profile. Applicants respectfully disagree with this analysis. Based on both the plain meaning of the phrase "driving profile" and the meaning of such phrase as supplied by the specification, mere storage of volume and speed pairings fails to constitute a driving profile. For example, Webster's II New College Dictionary, Third Edition, defines the word "profile" as "a graph or table representing numerically the extent to which a person or thing shows various tested features" or "a set of characteristics that identify or are thought to identify a particular type of person". A mere table of speeds and corresponding volumes, as disclosed in Skala, fails to meet either definition. The stored volume and speed pairings merely represent an operating rule and are not descriptive of the extent to which a person or thing shows various tested features or of characteristics that identify anything. Rather, the volume and speed pairings simply present the operating rule that if a certain current speed is detected, then the volume should be adjusted to match the corresponding stored speed. Thus, based on the plain meaning of the term "driving profile", Skala fails to teach or suggest converting the vehicle-specific conditions into a driving

profile indicating an actual driving situation of the vehicle as claimed in independent claims 9, 25 and 26.

Additionally, paragraph [0024] of the substitute specification of the present application describes the driving profile as being adapted to the abilities of the corresponding driver (paragraph [0024], lines 5-9). Applicants submit that this passage, consistent with the plain meaning of "driving profile" as described above, indicates that the driving profile is related to features, characteristics, or as clearly stated in the cited passage, the abilities of the driver. Furthermore, as stated in MPEP 2106 citing *Markman v Westview Instruments*, 52 F.3d 967, 980, 34 USPQ2d 1321, 1330 (Fed. Cir.) (*en banc*), *aff'd*, U.S., 116 S. Ct. 1384 (1996), "Office personnel must rely on the applicant's disclosure to properly determine the meaning of the claims." As such, Applicants submit that it is clear that Skala's disclosure of storing volume and speed pairings fails to meet the claimed feature of a driving profile since neither the volume nor the speed represent characteristics, features or abilities of the driver.

Applicants also respectfully query that if one were to argue that the vehicle-specific conditions of the claimed invention are analogous to the speed signal V of Skala, then what is the speed is converted into? In the claimed invention, the vehicle specific conditions are converted into a driving profile. To the contrary, Skala discloses at best that the vehicle speed V is converted into a corresponding output volume. The output volume cannot be fairly argued to correspond to a driving profile indicating an actual driving situation of the vehicle. Accordingly, for all the reasons stated above, the mere storing of volume and speed pairings as disclosed in Skala does not meet the claimed feature of converting the vehicle-specific conditions into a driving profile indicating an actual driving situation of the vehicle as claimed in independent claims 9, 25 and 26.

Oda also fails to teach or suggest converting the vehicle-specific conditions into a driving profile indicating an actual driving situation of the vehicle as claimed in independent claims 9, 25 and 26. Furthermore, Oda is not cited as teaching the above recited feature. Since both Skala and Oda fail individually to teach or suggest the claimed feature, any combination of the references likewise fails to teach or suggest converting the vehicle-specific conditions into a driving profile indicating an actual driving situation of the vehicle as claimed in independent claims 9, 25 and 26.

D. The Cited References Fail To Teach Or Suggest Blocking Or Releasing The Existing Operating States According To Whether The Actual Driving Situation Is Dangerous Or Non-Dangerous Based On The Driving Profile

Applicants submit that the cited references fail to teach or suggest blocking or releasing the existing operating states of an operable device according to whether the actual driving situation is dangerous or non-dangerous based on the driving profile as claimed in independent claims 9 and 25.

The final Office Action concedes that Skala fails to teach or suggest this feature. Accordingly, the final Office Action cited Oda as teaching such feature at col. 4, lines 9-25 & TABLE. However, the cited passage of Oda and the corresponding TABLE do not address blocking operable states of the operable device according to whether the actual driving situation is dangerous. In fact, Oda discloses that the operation modes listed in the table can preclude accident occurrence since the driver does not have to handle the phone (col. 4, lines 9-14 and lines 53-55). Applicants note that Oda discloses one mode in which operation is suspended. However, as disclosed in Oda at col. 5, lines 33-40, the mode switching is based merely on either an on/off state of the vehicle (Embodiment 1) or on high/low speed operation (Embodiment 2) with respect to a predetermined reference voltage which corresponds to a predetermined speed. As such, Oda does not disclose any determination of a dangerous **actual** driving situation. Instead, at best Oda simply discloses mode switching based on a high or low current speed condition. As explained in the substitute specification of the present application at paragraph [0020], lines 4-6, it may be safe to make a telephone call at a speed of 130 km/h (i.e., a high speed), when driving smoothly. Thus, a high speed condition alone is not necessarily indicative of a dangerous driving condition. Accordingly, the claimed invention bases the determination of whether the actual driving situation is dangerous on the driving profile and not merely on a high/low current speed determination as disclosed in Oda. Thus, Oda fails to teach or suggest blocking or releasing the existing operating states of an operable device according to whether the actual driving situation is dangerous as claimed in independent claims 9 and 25. Furthermore, since as stated above, both Oda and Skala fail to teach or suggest a driving profile as claimed in independent claims 9 and 25, the cited references necessarily fail to teach or suggest blocking or

releasing the existing operating states of an operable device according to whether the actual driving situation is dangerous **based on the driving profile** as claimed in independent claims 9 and 25.

E. The Cited References Fail To Teach Or Suggest Determining Vehicle-Specific Conditions By Measuring Fluctuations Of Driving Speed Over A Time Period And Blocking Or Releasing The Existing Operating States Of The Operable Device Based On The Measured Fluctuation

Applicants submit that the cited references fail to teach or suggest a decision unit determining vehicle-specific conditions by measuring fluctuations of driving speed over a time period of vehicle operation and blocking or releasing the existing operating states based on the measured fluctuation as claimed in independent claim 10.

The final Office Action asserts that Skala discloses the feature of a decision unit determining vehicle-specific conditions by measuring fluctuations of driving speed over a time period of vehicle operation at col. 3, lines 59-67 and col. 4, lines 26-28 and 34-56. However, the cited passages only refer to the volume and speed pairs discussed above. As also discussed in greater detail above, the entire disclosure of Skala is related to current speed measurements in order to determine whether volume should be adjusted based on the stored volume and speed pairs. Even a continuous measurement of instantaneous or static speed conditions would not constitute a measurement of speed fluctuations, without some further processing to relate each of the static values measured over a period of time. Skala provides no such disclosure of relating static values measured over a period of time. As such, Skala fails to teach or suggest a decision unit determining vehicle-specific conditions by measuring fluctuations of driving speed over a time period of vehicle operation as claimed in independent claim 10. Since Skala fails to teach or suggest measuring fluctuations of driving speed over a time period, Skala necessarily fails to teach or suggest blocking or releasing the existing operating states based on the measured fluctuation as claimed in independent claim 10 and is not cited as teaching such feature.

Oda also discloses measuring a current speed and comparing the current speed to a predetermined reference voltage in order to switch operating modes based on the whether the current speed is above or below the predetermined reference voltage. As such, Oda also fails to

teach or suggest a decision unit determining vehicle-specific conditions by measuring fluctuations of driving speed over a time period of vehicle operation as claimed in independent claim 10 and, in fact, is not cited as teaching or suggesting such feature. Since Oda fails to teach or suggest measuring fluctuations of driving speed over a time period, Oda necessarily fails to teach or blocking or releasing the existing operating states based on the measured fluctuation as claimed in independent claim 10.

Since both Skala and Oda individually fail to teach the claimed features of a decision unit determining vehicle-specific conditions by measuring fluctuations of driving speed over a time period of vehicle operation and blocking or releasing the existing operating states based on the measured fluctuation as claimed in independent claim 10, any combination of the references likewise fails to teach or suggest the above recited features as claimed in independent claim 10.

F. Conclusion

Since neither Skala nor Oda alone teach or suggest determining vehicle specific conditions over a period of time by either measuring fluctuations in driving speed of the vehicle over a time period (claim 10) or by creating a driving profile indicating an actual driving situation of the vehicle (claims 9, 25 and 26) and then blocking or releasing the existing operating states of an operable device based on the measured fluctuation (claim 10) or according to whether the actual driving situation is dangerous or non-dangerous based on the driving profile (claims 9 and 25), the cited references, either individually or in combination, fail to render independent claims 9, 10, 25 and 26 obvious for at least the same reasons described above. Claims 11-24 depend either directly or indirectly from respective ones of the independent claims 9 and 10, and thus include all the recitations of their respective independent claims. Therefore, dependent claims 11-24 are patentable for at least those reasons given above for the independent claims.

Accordingly, Applicants respectfully request that the rejections of claims 9-26 be reversed.

8. ***Claims Appendix.***

The claims currently on appeal are as follows:

1-8. (Canceled)

9. (Previously Presented) An operable device to be used in a vehicle, comprising:

an operating panel through which a user can cause at least one of producing existing operating states or changing existing operating states of the operable device; and

a decision unit, coupled to the operating panel, which receives data for determining vehicle-specific conditions over a time period of vehicle operation by evaluating the received data and which converts the vehicle-specific conditions into a driving profile indicating an actual driving situation of the vehicle and blocks or releases the existing operating states of the operable device according to whether the actual driving situation is dangerous or non-dangerous on a basis of the driving profile.

10. (Previously Presented) An operable device to be used in a vehicle, comprising:

an operating panel through which a user can cause at least one of producing existing operating states or changing existing operating states of the operable device; and

a decision unit, coupled to the operating panel, which receives data for determining vehicle-specific conditions by measuring fluctuation of a driving speed of the vehicle over a time period and blocks or releases the existing operating states of the operable device based on the measured fluctuation.

11. (Previously Presented) An operable device according to claim 9, wherein the operable device is operable to perform at least one of receiving or transmitting data.

12. (Previously Presented) An operable device according to claim 10, wherein the operable device is operable to perform at least one of receiving or transmitting data.

13. (Previously Presented) An operable device according to claim 9, comprising:

equipment which collects information on at least one of conditions or states under which or by which the operable device is currently being operated, and transmits the information as data to the decision unit.

14. (Previously Presented) An operable device according to claim 10, comprising:

equipment which collects information on at least one of conditions or states under which or by which the operable device is currently being operated, and transmits the information as data to the decision unit.

15. (Previously Presented) An operable device according to claim 11, comprising:

equipment which collects information on at least one of conditions or states under which or by which the operable device is currently being operated, and transmits the information as data to the decision unit.

16. (Previously Presented) An operable device according to claim 12, comprising:

equipment which collects information on at least one of conditions or states under which or by which the operable device is currently being operated, and transmits the information as data to the decision unit.

17. (Previously Presented) An operable device according to claim 9, comprising:

a receiving unit; and wherein

data is received by the receiving unit and is transmitted to the decision unit to be used alone or together with other data to control the blocking of the operating states or releasing of the operating states of the operable device.

18. (Previously Presented) An operable device according to claim 10, comprising:

a receiving unit; and wherein

data is received by the receiving unit and is transmitted to the decision unit to be used alone or together with other data to control the blocking of the operating states or releasing of the operating states of the operable device.

19. (Previously Presented) An operable device according to claim 11, comprising:

a receiving unit; and wherein

data is received by the receiving unit and is transmitted to the decision unit to be used alone or together with other data to control the blocking of the operating states or releasing of the operating states of the operable device.

20. (Previously Presented) An operable device according to claim 12, comprising:

a receiving unit; and wherein

data is received by the receiving unit and is transmitted to the decision unit to be used alone or together with other data to control the blocking of the operating states or releasing of the operating states of the operable device.

21. (Previously Presented) An operable device according to claim 13, comprising:

a receiving unit; and wherein

data is received by the receiving unit and is transmitted to the decision unit to be used alone or together with other data to control the blocking of the operating states or releasing of the operating states of the operable device.

22. (Previously Presented) An operable device according to claim 14, comprising:

a receiving unit; and wherein

data is received by the receiving unit and is transmitted to the decision unit to be used alone or together with other data to control the blocking of the operating states or releasing of the operating states of the operable device.

23. (Previously Presented) An operable device according to claim 15, comprising:

a receiving unit; and wherein

data is received by the receiving unit and is transmitted to the decision unit to be used alone or together with other data to control the blocking of the operating states or releasing of the operating states of the operable device.

24. (Previously Presented) An operable device according to claim 16, comprising:

a receiving unit; and wherein

data is received by the receiving unit and is transmitted to the decision unit to be used alone or together with other data to control the blocking of the operating states or releasing of the operating states of the operable device.

25. (Previously Presented) A method for controlling an operable device, which is used in a vehicle comprising the steps of:

controlling an operating panel by a user to cause at least one of producing existing operating states or changing existing operating states of the operable device;

receiving data in a decision unit which is coupled to the operating panel; determining vehicle-specific conditions over a time period of vehicle operation by evaluating the received data;

converting the vehicle-specific conditions into a driving profile indicating an actual driving situation of the vehicle; and

blocking or releasing the existing operating states of the operable device according to whether the actual driving situation is dangerous or non-dangerous on a basis of the driving profile.

26. (Previously Presented) A decision unit coupled to an operable device, which is used in vehicle, the decision unit comprising an input for receiving sensor signals;

the decision unit determining vehicle-specific conditions over a time period of vehicle operation by evaluating the received sensor signal and for converting the vehicle-specific conditions into a driving profile indicating an actual driving situation of the vehicle; and

an output for outputting an output signal, which is used for changing the operating states of the operable device connected to the decision unit.

9. ***Evidence Appendix.***

None.

10. ***Related Proceedings Appendix.***

None.

CONCLUSION

For at least the foregoing reasons, Applicants respectfully request that the rejections be reversed.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

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